

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
VS.	§	Criminal No. 3:03-CR-333-D
	§	(Civil Action No. 3:05-CV-0387-D)
STEVEN L. NAGY, ID # 31163-177,	§	
	§	
Defendant.	§	

ORDER

After making an independent review of the pleadings, files, and records in this case, and the July 21, 2007 findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted, and defendant's motion to vacate under 28 U.S.C. § 2255 is denied with prejudice.

Defendant's copy of the findings, conclusions, and recommendation was returned to the court as undeliverable on August 1, 2007, based on his release from prison. Nevertheless, the "in custody" determination is made as of the time the habeas petition or motion to vacate is filed. *See Pack v. Yusuff*, 218 F.3d 448, 454 n.5 (5th Cir. 2000). Additionally, because defendant is subject to a three-year term of supervised release, he remains "in custody" despite his release from imprisonment. *See id.* Thus the "in custody" requirement is satisfied despite defendant's recent release.

Defendant's release neither renders the § 2255 motion moot nor deprives the court of jurisdiction to consider the motion to vacate.

SO ORDERED.

August 27, 2007.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE